

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6089 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
5. Whether it is to be circulated to the Civil Judge? : YES

GORDHANBHAI RAMBHAI PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR GM AMIN for Petitioner

MR HL JANI, AGP for the respondent

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/08/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. H.L.Jani, learned A.G.P. waives service of notice of rule on behalf of the respondent. At the joint request of learned advocates appearing for the parties, the petition is taken-up for final hearing.

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, direction or order calling upon the respondent to decide the application filed under section 28-A of the Land Acquisition Act, 1894, which was received by the respondent on October 5, 1998. The petitioner has further prayed to direct the respondent to disburse the amount of compensation with running interest at the rate of 18% per annum.

The petitioner was owner of land bearing survey No.141, admeasuring 368 sq.mts. as well as land bearing survey No.133/1, admeasuring 1015 sq.mts. situated in the sim of village Memnagar, Taluka : City, District : Ahmedabad. The above referred to lands were acquired for the public purpose of 132 ft. ring road pursuant to publication of preliminary notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) on May 15, 1980. By the above-referred to notification, lands belonging to others were also acquired. The respondent had made award under section 11 of the Act, on September 23, 1986. Some of the claimants who were dissatisfied with the said award, had sought references, but reference application No.8/88 and other 25 matters were dismissed by the City Civil Court vide judgment dated August 18, 1989 and September 1, 1989. Against the judgment and order of the City Civil Court, claimants had filed First Appeals No.1644/90 to 1671/90 and the order passed by the City Civil Court was set aside by the High Court vide order dated May 4, 1993. The judgment rendered by the High Court was challenged before the Supreme Court by way of Special Leave Petition, but the judgment of the High Court was upheld by the Supreme Court. Meanwhile, the petitioner had filed an application under section 28-A of the Act on September 16, 1993, but according to the petitioner, there were several infirmities in the said application and, therefore, the said application was withdrawn. The petitioner has averred in the petition that in Compensation Case No.11/88 where reference was made to City Civil Court, Ahmedabad, Court enhanced compensation by judgment and award dated July 13, 1998. The petitioner, therefore, made another application under section 28A of the Act before the respondent, which was received by the respondent on October 5, 1998. The application submitted by the petitioner is produced at Annexure-A1 to the petition. The grievance made by the petitioner in the petition is that though the petitioner has addressed several reminders to the respondent,

application submitted by him under section 28A of the Act is not decided by the respondent. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

Though the respondent is duly served, no affidavit-in-reply is filed controverting the averments made in the petition.

From the averments made in the petition, it is evident that after judgment of the City Civil Court rendered in Compensation Case No. 11/88 on July 13, 1998 the petitioner has made application under section 28A of the Act, which is duly received by the respondent on October 5, 1998. The fact that said application is not yet decided, is not in dispute. Under the circumstances, necessary direction to the respondent to decide the application within stipulated time deserves to be given.

For the foregoing reasons, the petition partly succeeds. The respondent is directed to decide the application submitted by the petitioner under section 28A of the Act, which was received by the respondent on October 5, 1998, in accordance with law as early as possible and preferably within 3 months from today. Rule is made absolute accordingly, with no order as to costs.

Office is directed to send copy of this judgment to the respondent immediately. It will also be open to the petitioner to produce certified copy of this judgment before the respondent for necessary compliance.

(patel)